

Lot Split Subcommittee
Proposed Legislative Changes
November 2007

Changes proposed to ARS 11

11-1131. Definitions

In this article, unless the context otherwise requires:

1. "Department" means the department of revenue.
2. "Value" means:
 - (a) In any case other than a gift, the amount of the full actual consideration that is paid or to be paid, including the amount of any lien or liens.
 - (b) In the case of a gift or a contract or deed with nominal consideration or without stated consideration, the estimated price the property would bring in an open market and under the prevailing market conditions in a sale between a willing seller and a willing buyer, both of whom are conversant with the property and with prevailing general price levels.

3. "AFFIDAVIT OF DISCLOSURE" MEANS THE DOCUMENT REQUIRED UNDER SECTION 33-422.

11-1133. Affidavit of legal value; AFFIDAVIT OF DISCLOSURE

A. Each deed evidencing a transfer of title and any contract relating to the sale of real property shall have appended at the time of recording an affidavit OF LEGAL VALUE of the seller and the buyer to the transaction, or the agent of either the seller or buyer, or both, in a form approved by the department of revenue, who shall declare and jointly certify the following information:

1. The name and address of the buyer and seller.

2. The name and address where a tax statement may be sent.
3. The complete legal description of the property.
4. The situs address, if any, of the property.
5. The date of sale.
6. The total consideration paid for the property, the amount of cash down payment and whether or not the type of financing included cash, a new third party loan, a new loan from the seller, an assumption of an existing loan or an exchange or trade of property.
7. Whether or not the estimated market value of personal property received by the buyer equals five per cent or more of the total consideration.
8. The assessor's parcel number or numbers assigned to the real property by the county assessor or, in the case of a new parcel or parcels not yet assigned a parcel number, the parcel number or numbers of the previous parcel or parcels from which the new parcel or parcels are created.
9. The conditions of the transaction including the relationship, if any, of the parties.
10. The use and description of the property and, in the case of a residential dwelling, whether the property is to be owner-occupied or rented.
11. The name and address of the person to contact regarding information contained on the affidavit OF LEGAL VALUE.

B. The county recorder shall refuse to record any deed and any contract relating to the sale of real property if a complete affidavit of legal value **AND AFFIDAVIT OF DISCLOSURE** is not appended unless the instrument bears a notation indicating an exemption pursuant to section 11-1134 **OR SUBSECTION D.**

C. An affidavit OF LEGAL VALUE is complete for purposes of this section if all of the required information is stated on the affidavit form or is indicated on the form as "not applicable".

D. EACH DEED EVIDENCING A TRANSFER OF TITLE AND ANY CONTRACT RELATING TO THE SALE OF REAL PROPERTY SHALL HAVE APPENDED AT THE TIME OF RECORDING EITHER THE AFFIDAVIT OF DISCLOSURE OR A STATEMENT THAT THE TRANSFER OR SALE IS EXEMPT FROM THE AFFIDAVIT OF DISCLOSURE.

Changes Proposed to ARS 33

33-422. Land divisions; recording; disclosure affidavit

A. A seller of five or fewer parcels of land, other than subdivided land, in an unincorporated area of a county and any subsequent seller of such a parcel shall furnish a written affidavit of disclosure to the buyer, at least seven days before the transfer of the property, and the buyer shall acknowledge receipt of the affidavit.

B. The affidavit must be written in twelve point type.

C. No release or waiver of a seller's liability arising out of any omission or misrepresentation contained in an affidavit of disclosure is valid or binding on the buyer.

D. The buyer has the right to rescind the sales transaction for a period of five days after the affidavit of disclosure is furnished to the buyer.

E. ~~The seller shall record the executed affidavit of disclosure at the same time that the deed is recorded.~~ EACH DEED EVIDENCING A TRANSFER OF TITLE AND ANY CONTRACT RELATING TO THE SALE OF REAL PROPERTY SHALL HAVE APPENDED AT THE TIME OF RECORDING EITHER THE AFFIDAVIT OF DISCLOSURE OR A STATEMENT THAT THE TRANSFER OR SALE IS EXEMPT FROM THE AFFIDAVIT OF DISCLOSURE. The county recorder is not required to verify the accuracy

of any statement in the affidavit of disclosure. A subsequently recorded affidavit supersedes any previous affidavit.

F. The affidavit of disclosure shall meet the requirements of section 11-480 and follow substantially the following form:

When recorded mail to:

Affidavit of Disclosure

Pursuant to A.R.S. §33-422

I, _____ (seller(s) being duly sworn, hereby make this affidavit of disclosure relating to the real property situated in the unincorporated area of:

_____, County, State of Arizona, located at: _____

And legally described as:

(Legal description attached hereto as exhibit "A")

(property).

1. There ☐ is ☐ is not...legal access to the property, as defined in A.R.S. §11-809...☐ unknown

Explain: _____

2. There ☐ is ☐ is not...physical access to the property. ☐ unknown

Explain: _____

3. There ☐ is ☐ is not...a statement from a licensed surveyor or engineer available stating whether the property has physical access that is traversable by a two-wheel drive passenger motor vehicle.

4. The legal and physical access to the property ☐ is ☐ is not...the same...☐ unknown ☐ not applicable.

Explain: _____

If access to the parcel is not traversable by emergency vehicles, the county and emergency service providers may not be held liable for any damages resulting from the inability to traverse the access to provide needed services.

5. The road(s) is/are ☐ publicly maintained ☐ privately maintained ☐ not maintained ☐ not applicable. If applicable, there ☐ is ☐ is not...a recorded road maintenance agreement.

If the roads are not publicly maintained, it is the responsibility of the property owner(s) to maintain the roads and roads that are not improved to county standards and accepted for maintenance are not the county's responsibility.

6. A portion or all of the property ☐ is ☐ is not...located in a FEMA designated regulatory floodplain. If the property is in a floodplain, it may be subject to a floodplain regulation.

7. The following services are currently provided to the property: ☐ water ☐ sewer ☐ electric ☐ natural gas ☐ single party telephone ☐ cable television services.

8. The property ☐ is ☐ is not...served by a water supply that requires transportation of water to the property.

Notice to buyer: If water is transported to the property it means no water supply currently exists on the property. Water is procured from an offsite source and transported via a private water hauling service or other similar mechanism. The Arizona department of water resources may not have made a water supply determination for the water sources.

9. The property ☐ is ☐ is not...served by ☐ a municipal water provider ☐ a private well ☐ a shared well ☐ no well. If served by a shared well, the shared well ☐ is ☐ is not...a public water system, as defined by the safe drinking water act (42 United States Code § 300f).

Notice to buyer: If the property is served by a well, private water company or a municipal water provider the Arizona department of water resources may not have made a water supply determination. For more information about water supply, contact the water provider.

(note: no change is proposed to the rest of the affidavit of disclosure)...

11. The property ☐ does have ☐ does not have an on-site wastewater treatment facility (i.e., standard septic or alternative system to treat and dispose of wastewater). ☐ unknown. If applicable: a) The property ☐ will ☐ will not require installation of an on-site wastewater treatment facility; b) The on-site wastewater treatment facility ☐ has ☐ has not been inspected.

12. The property ☐ has been ☐ has not been subject to a percolation test. ☐ unknown.

13. The property ☐ does ☐ does not meet the minimum applicable county zoning requirements of the applicable zoning designation.

14. The sale of the property ☐ does ☐ does not . . . meet the requirements of A.R.S. § 11-809 regarding land divisions. If those requirements are not met, the property owner may not be able to obtain a building permit. The seller or property owner shall disclose each of the deficiencies to the buyer.

Explain: _____

15. The property ☐ is ☐ is not located in the clear zone of a military airport or ancillary military facility, as defined in A.R.S. § 28-8461. (Maps are available at the state real estate department's web site.)

16. The property ☐ is ☐ is not located in the high noise or accident potential zone of a military airport or ancillary military facility, as defined in A.R.S. § 28-8461. (Maps are available at the state real estate department's web site.)

17. Notice: If the property is located within the territory in the vicinity of a military airport or ancillary military facility, the property is required to comply with sound attenuation standards as prescribed by A.R.S. § 28-8482. (Maps are available at the state real estate department's web site.)

18. The property ☐ is ☐ is not located under military restricted airspace. ☐ unknown. (Maps are available at the state real estate department's web site.)

This affidavit of disclosure supersedes any previously recorded affidavit of disclosure.

I certify under penalty of perjury that the information contained in this affidavit is true, complete and correct according to my best belief and knowledge.

Dated this ____ (date) ____ day of (year) by:

Seller's name (print): _____ Signature: _____

Seller's name (print): _____ Signature: _____

State of Arizona)

☐ SS.

County of _____)

Subscribed and sworn before me this ____ (date) ____ day of (year), by

_____.

Notary public

My commission expires:

(date)

Buyer(s) hereby acknowledges receipt of a copy of this affidavit of disclosure this (date) day of (year)

Buyer's name (print): _____ Signature: _____

Buyer's name (print): _____ Signature: _____

G. For the purposes of this section, seller and subsequent seller do not include a trustee of a deed of trust who is selling property by a trustee's sale pursuant to title 33, chapter 6.1 or any officer who is selling property by execution sale pursuant to title 12, chapter 9 and title 33, chapter 6. If the seller is a trustee of a subdivision trust as defined in section 6-801, the disclosure affidavit required by this section shall be provided by the beneficiary of the subdivision trust.